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Who's pulling the strings?

Parental alienation has the potential to cause serious harm to families & children: [Luke Scarratt](#) discusses the tools at the court's disposal when it raises its head

IN BRIEF

- ▶ How the courts are applying the law in relation to parental alienation.
- ▶ What tools the courts have available in these instances.
- ▶ The difficulties in proving parental alienation and the different, often subtle forms it takes.
- ▶ What lawyers, clients and practitioners need to do if parental alienation is alleged.

Upon divorce or the breakdown of a family, the relationship between a child and their parents can often encounter difficulties.

Children may gravitate towards one or the other parent for any number of personal and practical reasons. Conversely, children may become hostile or resistant to their relationship with one parent, possibly seeking to blame them for the breakdown of the marriage or relationship, or motivated by perceived personality flaws. Sadly, there are almost limitless potential ways in which family conflict can cause a breakdown in a child's relationship with one parent, because (to quote *Anna Karenina's* famous opening line) 'happy families are all alike; every unhappy family is unhappy in its own way'.

Increasing hostilities

Indeed, difficulties in parent-child relationships can occur even where both parents are trying to work together to prioritise their child's best interests. However, in those cases, a combination of cooperation, understanding, and patience will usually repair any damage, once the dust has settled on the divorce or separation. Professional family therapy can be effective in speeding up the healing process, particularly if both parents engage with therapy in good faith.

However, the family courts regularly

hear cases where one parent is actively damaging their child's relationship with the other parent, by way of a process called 'parental alienation'. Typically, this issue arises during a dispute concerning child arrangements when a child refuses to spend time (or limits their time) with one parent, in favour of the other.

The Children and Family Court Advisory and Support Service (Cafcass), which advises the family courts in relation to children's best interests, has provided a definition of parental alienation, as follows: 'When a child's resistance/hostility towards one parent is not justified and is the result of psychological manipulation by the other parent.' Lord Justice Peter Jackson added to this definition in *Re S (parental alienation: cult)* [2020] EWCA Civ 568, [2020] All ER (D) 07 (May) by commenting that the manipulation of the child 'need not be malicious or even deliberate. It is the process that matters, not the motive.'

Courts are concerned with parental alienation because, as Mr Justice Keehan put it in *Re H (parental alienation) PA v TT and another* [2019] EWHC 2723 (Fam), [2019] All ER (D) 85 (Oct): 'Parental alienation is very harmful to a child. It skews the child's ability to form any and all sorts of relationships and is not limited to the failed relationship with the other parent.'

The question of whether parental alienation is taking place is a matter of fact. Accordingly, it is important that the court conduct a 'fact-finding' exercise at the earliest available opportunity, with the assistance of Cafcass and/or social workers, to assess whether the child's hostility towards one parent is the result of psychological manipulation by the other.

There is no fixed age at which a child is allowed to make their own choice

regarding contact with their parents—each case is dealt with on a case-by-case basis, and a child's wishes and feelings will be taken into account once they are mature enough to express those wishes and feelings, and are likely to gain greater weight as the child increases in age and maturity. However, a child's wishes and feelings will not be determinative, particularly if there is evidence of parental alienation, and the court's paramount consideration is the child's welfare rather than their wishes and feelings. However, in most cases, the Family Court will not make a child arrangement order in relation to a child over 16. It is therefore important to tackle any problem as early as possible.

Psychological manipulation can take many forms, but, typically, the clearest examples are where one parent promotes unfounded accusations or suspicions about the conduct of the other parent. For example, in *Re S*, the court noted that a feature of the mother's case was the 'insinuation of sexual impropriety' on behalf of the father, in the absence of any evidence. Likewise, in *Re L (A Child)* [2019] EWHC 867 (Fam), [2019] All ER (D) 66 (May), the court found that the child in question had been manipulated into making allegations of sexual and physical abuse against his father—and again, these allegations were baseless. Other clear signs of psychological manipulation include telling the child that the other parent does not love them, or expressly disparaging the other parent to the child.

In addition to these more clear-cut cases, the court regularly sees more subtle signs of psychological manipulation—even sometimes where the 'alienating' parent is genuinely unaware that they are conditioning their child against the other parent. For example, one parent's anxiety about their child spending time with the other parent can be transmitted onto the child themselves. This transmitted anxiety can create a self-fulfilling negative feedback loop between the parent and child, which will reach a crescendo in the lead-up to contact with the other parent. As a result, the child may decide (consciously or unconsciously) that they do not wish to spend time with the other parent, in order to limit their anxiety—and the anxiety expressed by their anxious parent.

Indeed, even behaviour that may seem positive can, in some contexts, be assessed to be part of a process of parental alienation. For example, excessive reassurance (before or during contact) that the child's time with the other parent will go smoothly, or the giving of 'treats' upon the conclusion of contact can emphasise in the child's mind that contact with that

parent is something to be endured rather than enjoyed.

Spectrum of severity

As the examples of parental alienation above demonstrate, there is what the court in *Re S* referred to as a 'spectrum of severity', and where the case appears on that spectrum will inform the appropriate remedy applied by the court. The welfare of the child will be the court's overriding concern.

At the low end of the spectrum of severity, the court will often urge the parents to co-operate to repair the relationship, take undertakings as to each parent's conduct, and make appropriate orders for contact. Particularly in circumstances where the parental alienation is unintentional, and there is a recognition from both parents that the status quo is harming their child, this approach can be effective if encouraged from an early stage. Including a recital to attend family therapy by agreement can give the court confidence that any issues will be addressed in a therapeutic rather than a litigious context. In these cases, you will expect to find that the parents are presenting a united front to the child, have a working relationship, and are able to communicate politely and in good faith. If the child refuses to see one parent, while that is likely to be a breach of an order by the other parent, the parents are likely to form a plan to prevent another breach either between themselves and/or with therapists rather than returning the matter to court.

At the higher end of the spectrum, the courts are urged to 'take a medium- to long-term view and not accord excessive weight to short-term problems', per Sir Thomas Bingham MR in *Re O (a minor) (contact: imposition of conditions)* [1995] 2 FLR 124. What this means, in practice, is that the courts will not shy away from ordering a transfer of residence where serious parental alienation is found. This

order means that the child is ordered to live with the parent from whom they are becoming alienated, notwithstanding that this transfer of residence is likely—even expected—to create short-term difficulties. The president of the Family Division, Sir Andrew McFarlane, emphasised that a transfer of residence is *not* to be regarded as 'a last resort' (*Re L (A Child)* [2019] EWHC 867 (Fam), [2019] All ER (D) 66 (May)).

However, one approach that judges have taken to ameliorate this highly significant alteration of a child's living arrangements is to order a *conditional* transfer of residence order—ie that the parent who is alienating the child is given one last chance to demonstrate a change in their behaviour, otherwise the child's residence will be transferred to the other parent. In these cases, sadly you will expect to find that each parent is quick to attempt to return the matter to court, particularly if one parent is said to have breached an order, rather than putting in place a consensual plan to tackle the child's behaviour. The co-parenting relationship is likely to have broken down completely, and communication—if occurring at all—is difficult and will exacerbate rather than address the problems facing their family.

The challenge faced by the courts is daunting. The longer that a process of alienation persists, the more strained the parent-child relationship becomes, and therefore the greater the challenge for the court. As Peter Jackson LJ noted in *Re S*: 'The situation calls for judicial resolve because the line of least resistance is likely to be less stressful for the child and for the court in the short term. But it does not represent a solution to the problem. Inaction will probably reinforce the position of the stronger party at the expense of the weaker party and the bar will be raised for the next attempt at intervention.'

A complex intersection

When dealing with cases involving allegations of parental alienation, it is crucial to:

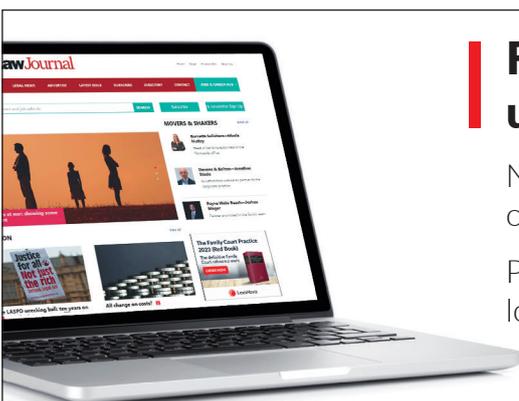
- (1) engage with an early fact-finding process to determine whether or not any process of parental alienation is underway, and if so, the particular features of that process occurring with the child in question;
- (2) if the court determines that a process of parental alienation is underway, to engage with a consensual plan, including family therapy, to repair the damaged relationship with a minimum of disruption to the child's normal life; and
- (3) if one parent does not accept the court's findings of parental alienation, to consider more significant orders like transfers of residence and/or enforcement of existing orders.

Issues of parental alienation exist in a complex intersection of family law, family therapy, and the subtleties of a child's relationship with their parents during a family breakdown. As Mr Justice Cobb commented in *Re A and B (Contact) (No 4)* [2015] EWHC 2839 (Fam), [2015] All ER (D) 147 (Oct): 'Court orders are blunt tools which are devised to regulate parties' actions, but they cannot change personalities, and cannot change the way people function as people.'

Accordingly, where parental alienation is alleged, to avoid lasting damage to a child's relationship with a parent (and the damage that will do to their relationships more generally as they grow older), parents must seek early advice and propose/engage with a holistic and consensual plan centred around the child's welfare.

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